

STATE OF WASHINGTON

OFFICE OF PUBLIC DEFENSE



First Annual Report

1997

WASHINGTON STATE OFFICE OF PUBLIC DEFENSE

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Mr. Andy Pascua
Ms. Catherine Smith

Office of Public Defense
925 Plum Street,
Building 4 Third Floor
P.O. Box 40957
Olympia, Washington 98504-0957
360-956-2106
fax: 360-956-2112
e-mail: opd.@opd.wa.gov

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I. Overview

The Office of Public Defense (OPD) was established by the 1996 Legislature to administer all appellate indigent defense services. The agency administers all state funds appropriated for appellate indigent defense, develops administrative procedures, standards, and guidelines for the program, including a cost efficient system that provides for recovery of costs, and recommends criteria and standards for determining and verifying indigency. The agency also collects information regarding indigency cases funded by the state, and reports annually to the Legislature and the Supreme Court. The Office of Public Defense is supervised by an Advisory Committee comprised of legislators, judicial representatives, attorneys and lay people. The legislative authority for the agency is Chapter 221, Laws of 1996.

II. Mission Statement

It is the mission of the Office of Public Defense to implement the constitutional guarantee of counsel on appeal by ensuring the effective and efficient delivery of indigent appellate services to people of the State of Washington.

III. History

Until 1996 the administration of appellate services to indigent people charged with certain criminal or civil cases was handled by the Washington State Supreme Court and by the state Office of the Administrator for the Courts (OAC). In 1996 the Legislature determined that administration of these services should be handled by a separate agency within the judiciary which would be in charge of processing the invoices presented by appellate attorneys, court clerks and court reporters in cases appealed to the Washington appellate courts. The Office of

Public Defense was created in response to that demand and began operation on July 1, 1996.

a. Process for appeal

The appellate courts of the state of Washington are divided into three geographical areas. Division One of the Court of Appeals has jurisdiction over appeals arising out of King, Snohomish, Skagit and Whatcom Counties. Division Two has jurisdiction over appeals from Pierce County and all the counties to the south and west of Tacoma. Division Three, located in Spokane, has jurisdiction over all appeals arising in counties located east of the Cascade Mountains. The Supreme Court has jurisdiction over all three appellate court divisions. Cases are appealed from the trial court directly to the appellate court which has jurisdiction over the case.

There are no appellate attorneys on staff at OPD. Rather, the work of OPD is to process and approve for payment the invoices submitted by private attorneys and non-profit corporations who have been appointed and who represent indigent people on appeal.

The agency has five people on staff. There is a director, a deputy director, an executive assistant, a fiscal analyst who processes attorney invoices, and an accountant who processes court clerk and court reporter invoices. Only two of these positions were newly-created when the agency was established. The other three positions existed at the Supreme Court and OAC and were transferred to this agency when it began.

b. Process for payment of invoices

When a person has been convicted of a crime in the state of Washington he or she has a right to appeal the conviction to an appellate court. The trial judge appoints a private attorney to represent the person on appeal. Because there is a constitutional right to an appeal the state must pay for the person's attorney if the person cannot afford to pay the attorney. The attorney appointed on the appeal files a brief on behalf of the convicted person. That brief is filed in the appellate court which has jurisdiction over the county in which the trial was held. A transcript is also made of the trial. Once the transcript and brief have been filed, the attorney and the court reporter ask OPD to pay them for the work they have done. OPD reviews the invoices submitted by the attorney, court reporter or the court clerk (who prepares the legal papers) then authorizes the payment. Payment is made based on a rate adopted by the OPD Advisory Committee. Invoices are scrutinized closely and payment is denied if reimbursement requests are not authorized.

IV. Accomplishments of the agency

In spite of being a new agency, OPD has already improved the efficiency with which appellate services are provided in this state. In the eighteen months during which the agency has been processing invoices, the turn-around time for payment to providers (including attorney, reporter and court clerk) has gone from two months down to one week, or less. It is not unusual for the agency to pay an invoice within 24 hours of its receipt.

During the first eighteen months of this agency, new procedures have been adopted for the court reporter and attorney invoices which have allowed OPD to better determine the appropriateness of payment. To date, as a result of enhanced scrutiny of reimbursement requests, this agency has saved the state over \$217,000.

In the last eighteen months OPD has processed a total of 6300 court reporter invoices, 3027 court clerk invoices, and 2005 requests for payment for reproduction of briefs from the appellate courts. The agency has processed invoices from attorneys in over 5877 cases. In total, the agency has processed over 15,000 invoices since its inception.

Because in the last five years there has been no increase in the rate attorneys are paid, OPD revised the case payment schedule for attorneys and successfully advocated a \$200 per case payment increase for all non-death penalty cases effective during the 1997-1999 biennium budget.

The agency has also negotiated contracts with two non-profit law firms in Seattle to provide appellate services to indigent people who are convicted of crimes or lost their parental rights in the Division One area. These contracts allow provision of appellate services for the next two years, concurrent with the state's biennium budget.

In general, OPD has given stability to appellate services provided in the state of Washington, enhanced the public's access to the state agency and straightened out the often confused path to state reimbursement. The agency has proved to be a success and the Legislature has extended OPD's sunset provision from the year 2000 to the year 2008.

V. Budget

The budget for the Office of Public Defense for the 1997-1999 biennium is \$12,204,544. Most of the money appropriated is "pass-through" money which goes directly to the agency's providers. The administrative costs of the agency, approximately \$822,367, forms 6% of the total budget of the agency. These costs include salaries, supplies, rent and payment for services provided by other state agencies. OPD is operating within its budget.

VI. Future projects

In the next year the Office of Public Defense is looking forward to a number of opportunities to assist in improving appellate services in this state. The agency is involved in a pilot project with the Court of Appeals, Division Two in which the Court is establishing minimum standards for attorneys representing indigent people on appeal.

The agency has also been called upon to present an analysis and proposal to the Legislature regarding costs in death penalty cases and to develop standards for these cases which will help control costs but still ensure indigent clients receive constitutionally mandated representation in death penalty cases. This report is due in September 1998.

The Legislature has also asked OPD to recommend criteria and standards for determining and verifying that appellate clients are indigent and, therefore, entitled to a state-funded attorney.

The agency is also involved in the revision of appellate rules which affect the right to an attorney on appeal and in rewriting the procedures by which appeals are governed in order to ensure the consistency of the appellate court rules.

VI. Agency personnel

Anne Hall, Interim Director
Kelly Reid, Executive Assistant
Ann Childers, Fiscal Analyst
Sharon McAferty, Accountant

LEGISLATION CREATING THE OFFICE OF PUBLIC DEFENSE

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RCW Chapter 2.70

2.70.005 Intent. In order to implement the constitutional guarantee of counsel and to ensure the effective and efficient delivery of the indigent appellate services funded by the state of Washington, an office of public defense is established as an independent agency of the judicial branch.

2.70.010 Director—Appointment—Qualifications—Salary. The supreme court shall appoint the director of the office of public defense from a list of three names submitted by the advisory committee created under RCW 2.70.030. Qualifications shall include admission to the practice of law in this state for at least five years, experience in the representation of persons accused of a crime, and proven managerial or supervisory experience. The director shall serve at the pleasure of the supreme court and receive a salary to be fixed by the advisory committee.

2.70.020 Director—Duties—Limitations. The director, under the supervision and direction of the advisory committee, shall:

- (1) Administer all criminal appellate indigent defense services;
- (2) Submit a biennial budget for all costs related to state appellate indigent defense;
- (3) Establish administrative procedures, standards, and guidelines for the program including a cost-efficient system that provides for recovery of costs;
- (4) Recommend criteria and standards for determining and verifying indigency. In recommending criteria for determining indigency, the director shall compile and review the indigency standards used by other state agencies and shall periodically submit the compilation and report to the legislature on the appropriateness and consistency of such standards;
- (5) Collect information regarding indigency cases funded by the state and report annually to the legislature and the supreme court;
- (6) Coordinate with the supreme court and the judges of each division of the court of appeals to determine how attorney services should be provided.

The office of public defense shall not provide direct representation of clients.

2.70.030 Advisory committee—Membership—Duties—Travel and other expenses. (1) There is created an advisory committee consisting of the following members:

- (a) Three persons appointed by the chief justice of the supreme court, including the chair of the appellate indigent defense commission identified in subsection (3) of this section;
 - (b) Two nonattorneys appointed by the governor;
 - (c) Two senators, one from each of the two largest caucuses, appointed by the president of the senate; and two members of the house of representatives, one from each of the two largest caucuses, appointed by the speaker of the house of representatives;
 - (d) One person appointed by the court of appeals executive committee;
 - (e) One person appointed by the Washington state bar association.
- (2) During the term of his or her appointment, no appointee may: (a) Provide indigent defense services except on a pro bono basis; (b) serve as an appellate judge or an appellate court employee; or (c) serve as a prosecutor or prosecutor employee.
- (3) The initial advisory committee shall be comprised of the current members of the appellate indigent defense commission, as established by Supreme Court Order No. 25700-B, dated March 9, 1995, plus two additional legislator members appointed under subsection (1)(c) of this section. Members shall serve until the termination of their current terms, and may be reappointed. The two additional legislator members, who are not on the appellate indigent defense commission, shall each serve three-year terms. Members of the advisory committee shall receive no compensation for their services as members of the commission, but may be reimbursed for travel and other expenses in accordance with rules adopted by the office of financial management.

2.70.040 Employees—Civil service exemption. All employees of the office of public defense shall be exempt from state civil service under chapter 41.06 RCW.

2.70.050 Transfer to office of appellate indigent defense powers, duties, functions, information, property, appropriations, employees, rules, and pending business—Appointment—Effect on collective bargaining. (1) All powers, duties, and functions of the supreme court and the office of the administrator for the courts pertaining to appellate indigent defense are transferred to the office of public defense.

(2)(a) All reports, documents, surveys, books, records, files, papers, or written material in the possession of the supreme court or the office of the administrator for the courts pertaining to the powers, functions, and duties transferred shall be delivered to the custody of the office of public defense. All cabinets, furniture, office equipment, motor vehicles, and other tangible property employed by the supreme court or the office of the administrator for the courts in carrying out the powers, functions, and duties transferred shall be made available to the office of public defense. All funds, credits, or other assets held in connection with the powers, functions, and duties transferred shall be assigned to the office of public defense.

(b) Any appropriations made to the supreme court or the office of the administrator for the courts for carrying out the powers, functions, and duties transferred shall, on June 6, 1996, be transferred and credited to the office of public defense.

(c) Whenever any question arises as to the transfer of any personnel, funds, books, documents, records, papers, files, equipment, or other tangible property used or held in the exercise of the powers and the performance of the duties and functions transferred, the director of financial management shall make a determination as to the proper allocation and certify the same to the state agencies concerned.

(3) All employees of the supreme court or the office of the administrator for the courts engaged in performing the powers, function, and duties transferred are transferred to the jurisdiction of the office of public defense. All employees classified under chapter 41.06 RCW, the state civil service law, are assigned to the office of public defense to perform their usual duties upon the same terms as formerly, without any loss of rights, subject to any action that may be appropriate thereafter in accordance with the laws and rules governing state civil service.

(4) All rules and all pending business before the supreme court or the office of the administrator for the courts pertaining to the powers, functions, and duties transferred shall be continued and acted upon by the office of public defense. All existing contracts and obligations shall remain in full force and shall be performed by the office of public defense.

(5) The transfer of the powers, duties, functions, and personnel of the supreme court or the office of the administrator for the courts shall not affect the validity of any act performed before June 6, 1996.

(6) If apportionments of budgeted funds are required because of the transfers directed by this section, the director of financial management shall certify the apportionments to the agencies affected, the state auditor, and the state treasurer. Each of these shall make the appropriate transfer and adjustments in funds and appropriation accounts and equipment records in accordance with the certification.

(7) Nothing contained in this section may be construed to alter any existing collective bargaining unit or the provisions of any existing collective bargaining agreement until the agreement has expired or until the bargaining unit has been modified by action of the personnel board as provided by law.